INSTITUTE OF LAW RESEARCH AND REFORM
EDMONTON, ALBERTA

ANNUAL REPORT
1987-1988

March 31, 1988

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INSTITUTE OF LAW RESEARCH AND REFORM

EDMONTON, ALBERTA

ANNUAL REPORT

1 April 1987 - 31 March 1988

SUMMARY OF YEAR'S ACTIVITIES

During the reporting year the Institute made substantial progress towards its objective of completing its existing work program. The Institute has been concerned to attain this objective both because some of the projects it has on foot are of relatively long standing, and because there are other matters which are thought to be of public importance requiring relatively urgent law reform attention, and to which it would like to turn its attention.

The Institute issued five reports in the reporting year. One was a final report, two were of a consultative variety, and the Institute distributed two substantial Issues Papers.

In the field of corporations law reform, the Institute has now nearly completed the very large task of overhauling Alberta corporations law. A final report on Non Profit Corporations was issued last year and led to the introduction of a Bill into the Alberta Legislature. That Bill has not yet passed, but has been allowed to lie over to enable further public input. The Institute this year issued a consultative report on financial assistance by corporations. This consultative report deals with one section of the Alberta Business Corporations Act which has been found to be particularly troublesome in practice in this province and elsewhere in Canada, and in other Commonwealth jurisdictions. This is the first report by a Commonwealth law reform agency on this topic and will, the Institute hopes, lead to reviewed solutions to the very difficult problems raised by loans and other financial assistance to persons having a managerial or financial interest in a corporation. A final report on this subject is expected in 1988.

The Institute has devoted a good deal of resources in the last several years to a review of creditor debtor law in Alberta. In the reporting year we were able to issue a final report on Prejudgment Remedies, and it is expected that this will be the first in a series of either three or four final reports covering off that field. The other reports are expected to go to press at the end of 1988.

Completion of the foregoing work will complete a very large secondment of Institute resources in the commercial law area in Alberta.

Another project which has been on foot for some time is that of Sterilization of Mentally Incompetent Persons. Some months ago the Institute had had a report prepared to go to press, but the decision of the Supreme Court of Canada in *Re Eve* required a complete revision of work in that subject area. In the result the Institute has now issued a Report for Discussion of a consultative variety. This proposes a legislative regime which it is hoped will provide a better balanced and more appropriate vehicle for the adjustment of the very difficult issues at stake in this subject area. A final report is expected in this area in 1988.

Another contemporary problem area concerns relations between unmarried cohabitants, and the legal incidents which attach to that relationship. An Issues Paper suggesting the various questions arising and tentative solutions was issued in 1988. Submissions are being received and further consulting undertaken on this Paper. A final report on this subject area will issue in 1988.

There are two other subject areas where there are long standing projects which the Institute is concerned to get completed. One is Land Titles, and the other concerns Mortgage law. Unfortunately, resources have simply not permitted the Institute to advance those two projects as far as it would have preferred. However, now that work in the subject areas of corporations law and creditor/debtor law has been substantially advanced, it is hoped to be able to devote greater resources to these two projects later in 1988.

As to new projects, the Institute's objectives include research and reform with respect to the administration of justice. It has never been able to undertake as much work in this area as it has wanted to. The Board has determined that, at least in the medium term, the Institute should be

more concerned with such matters. A decision has been made to undertake three projects specifically designed to improve the administration of justice.

First, a review of the Arbitration Act is thought timely. An Issues Paper on this topic was published. Consulting is continuing and a final report is expected in 1988.

Mr. J.E. Côté, Q.C. (as he then was; now the Honourable Mr. Justice Côté of the Alberta Court of Appeal) suggested that the subject of accounts, inquiries and referees is worthy of examination, and he has been writing a report for the Institute. This report is expected later in 1988.

As a third step, the Institute has struck a committee to look at specific ways in which the day to day workings of the courts might be improved.

Beyond that, the Institute hopes to be able to move resources into the larger area of alternative dispute resolution. The Institute has yet to formulate a distinctive strategy or to formally second resources to that strategy, but the Institute's Board does have a general concern that this area should be addressed as soon as resources permit.

As to Board membership, in the year in question, Mr. J.L. Foster, Q.C. joined the Board. Mr. Foster is a former Attorney General of the Province, and both his experience in public life, and his legal experience will be of great benefit to the Institute.

As to permanent staff, the Director, Professor R.G. Hammond, indicated that he would be returning to New Zealand to take up an appointment there. A new Director, Professor P.J.M. Lown, has been appointed. Two senior and longstanding staff members reached retiring age, and were replaced with two new staff members. The front office staff remained unchanged.

As to internal operating systems, various changes and efficiencies were effected, including the establishment of a committee system for the Institute, and the further computerization of the Institute's operations.

Funding continued at approximately the same level as in the previous reporting year.

The Institute continues to receive suggestions for reform and for additions to its general program from members of the judiciary, the legal profession and the public. It has continued to receive substantial assistance from many members of the profession and and judiciary. The Law Society of Alberta and the Canadian Bar Association, both through its provincial branch and its many subsections, continued to offer a very considerable measure of support to the Institute. The work of the Institute would not be possible without the support of government, the University of Alberta, and the Bar. It appreciates the interest taken in its work and extends sincere thanks to all of those who have taken the time to assist it.

THE INSTITUTE OF LAW RESEARCH AND REFORM

In 1968, the Attorney General of Alberta, the Governors of the University of Alberta, and the Law Society of Alberta established the Institute of Law Research and Reform for a period of five years. They did so by an agreement dated November 15, 1967. They have continued the Institute by successive quinquennial renewals of the agreement, the last of which was entered into on March 31, 1987.

The Institute's governing body is its Board. The three founding bodies appoint members to that Board. Those members co-opt additional members to the Board. Together with the Governors of the University of Alberta, such members appoint the Institute's Director, who serves as its chief executive officer. The Faculty of Law of the University of Calgary appoints one Board member.

Funding for the Institute comes from three sources. The University of Alberta provides the Institute with office premises and many additional services. It also makes a fixed annual grant to the Institute. The second source is the Attorney General, who provides approximately 40% of the balance of the Institute's agreed budget. The third and largest source of funding is the Alberta Law Foundation, which provides approximately 60% of the balance of the Institute's agreed funding.

The Alberta Law Foundation is established by the Legal Profession Act and receives interest on lawyers' mixed trust accounts. One of the statutory purposes to which the money is put is conducting research into and recommending reform of the law and the administration of justice.

The Law Foundation grants are made to the Institute for those purposes. The Foundation began to make grants to the Institute on a project basis in 1973, and since 1977 it has made grants towards the Institute's core funding.

The Institute believes that the Foundation, through its grants to the Institute as well as in other ways, has made an important contribution to the public life of Alberta. The Institute is grateful to the Foundation for its continued support.

The Institute works in close liaison with, although it is independent of, the Attorney General's Department. It has enjoyed cordial relations with the present Attorney, The Honourable J.D. Horsman, Q.C. and his Deputy, Mr. D.W. Perras, Q.C. The Institute greatly appreciates the support and encouragement of the Department and its endeavours to move the Institute's work products into legislative form.

The Institute has also had, over the last several years, a close working relationship with the Department of Consumer and Corporate Affairs. The Institute was responsible for the evolution of the Alberta Business Corporations Act and certain other reports in the area of commercial and consumer law. That Department and its Minister (now the Honourable Elaine McCoy) have also given support and encouragement to the work of the Institute. The Institute is grateful.

The Institute has a permanent staff of ten persons, including six Counsel. Outside experts and consultants are also retained from time to time. The Institute has an arrangement with the University of Alberta Law Faculty under which a senior Faculty member is seconded for periods of up to two years at a time to work on Institute projects in areas where that Faculty member has particular expertise.

TWENTIETH ANNIVERSARY OF INSTITUTE

The first meeting of the Board of Directors of the Institute of Law Research and Reform (Alberta) was held on Thursday, November 30th, 1967. Those present were Professor D.T. Anderson, H.G. Field, Q.C., S.A. Friedman, Q.C., J.E. Hart, Q.C., W.H. Hurlburt, Q.C.,

J.S. Palmer, Dr. A.R. Thompson, and Dr. M. Wyman. Mr. Field was elected Chairman of the Board of Directors and Professor Thompson as Secretary.

The events which led to the formation of the Institute are described in detail in Mr. W.H. Hurlburt's book, *Law Reform Commissions in the United Kingdom and Australia* (Juriliber, 1986) at pages 215 to 223. Essentially, in keeping with experience elsewhere in the British Commonwealth, it had been found that voluntary part-time law reform work by members of the profession through the Law Reform Committee established by the Benchers of the Law Society could not adequately discharge the functions of a law reform agency for the Province. The form which the proposal took was, as Mr. Hurlburt has noted, "novel at the time and ... remains unique."

At the initial meeting of the Board of Directors Dr. Wyman, the Vice-President of the University, noted that "such an Institute was the first of its kind in Western Canada and gave promise of playing a significant role both in the University and in the community."

At the first meeting of the Board of Directors, the Directorship of the Institute was offered to Professor W.F. Bowker, Q.C., formerly Dean of Law at the University of Alberta. It was under the wise and dedicated leadership of Dean Bowker, and subsequently Mr. W.H. Hurlburt, Q.C. that the Institute was established. Unquestionably the subsequent development and work record of the Institute has owed its impetus to the leadership of these two men. At the same time, substantial contributions by many members of the legal profession and the law faculties in Alberta should be noted. The Appendices to this Report list the past Board members who have contributed to the work of the Institute. Previous Annual Reports record the legal staff who have worked on the many reports which have found their way into Alberta legislation.

At a time when it has become fashionable, at least in some quarters, to question the importance of formal, institutional law reform bodies, the Institute can point to a very solid twenty year record of professional, workable, law reform proposals. These appear to have born out the confidence reposed in the institution by its founders, and the expectations of its first Board of Directors.

A dinner in honour of the occasion at Government House will be hosted by the Attorney General. A more detailed record of the Institute's genesis and work will be published in an issue of the Alberta Law Review in 1988.

PROJECT SELECTION

The Institute, is, as noted, founded under a joint venture agreement to achieve certain stated objectives. It has no statutory basis, and is therefore able, within the bounds of the stated objectives, to choose its own law reform program.

No project is undertaken without the specific approval of the Board of Directors, after due deliberation as to the objectives of that project, the resource implications of assuming it, the likelihood of its producing distinct and worthwhile changes in the law, and any other relevant matters.

The initial impetus for a law reform project undertaken by the Institute can come from one of several sources. First, the Institute has undertaken much of its work at the suggestion of the Attorney General and other government departments. Statutes such as the Matrimonial Property Act and the Alberta Business Corporations Act were evolved with the overt encouragement of government. It is essential that a law reform agency be truly "independent" and the Institute's Board makes its own decision as to whether the Institute can and should take on a project. On some occasions projects suggested by government departments have not been taken on for one reason or another. On the whole, however, there has been a solid level of cooperation at an informal level between government departments and the Institute.

A second source of suggestions for law reform projects are the members of the Institute itself. Individual Board members or legal staff from time to time suggest matters which ought to be taken up.

A third major source of suggestions for law reform projects is the legal profession. Members of the Bar or members of the judiciary regularly make suggestions as to matters which ought to be addressed. The formal bodies connected with the Bar -- the Law Society and the Canadian Bar Association -- also from time to time raise suggestions with the Institute.

The Institute endeavours to maintain regular contact with members of the Legislature by sending copies of Reports and Annual Reports to all members of the Legislature and the Cabinet. From time to time suggestions are received from all political parties.

It is open to any member of the public to suggest something which ought to be addressed as a law reform project, and from time to time, though less frequently, suggestions are received.

The Institute maintains standing files on all suggestions received for law reform projects. It conducts planning reviews of these suggestions as projects are completed and opportunities to take on new law reform work present themselves.

It follows that the Institute has not ever had a distinct "programmatic" approach to the selection of law reform projects. It has tended to be pragmatic and to select projects which are thought to raise contemporary and compelling concerns of a relatively discrete nature and where it is thought that the application of the Institute's resources will result in something workable which will likely gain the acceptance of the Legislature. Inevitably however, selection of projects has tended to reflect the concerns of the particular period. For instance at one point the Institute was heavily involved in an overhaul of family law in the province; subsequently a number of the commercial law statutes were considered. More recently a sense of concern with respect to the administration of justice, delays in the courts, costs and so forth has begun to emerge. The Institute, in short, in project selection tends to be a mirror of concerns being felt in the real world.

The Institute invites any person, through the office of the Director, to suggest topics for law reform projects in the province.

The Institute is very much aware of the importance of cooperative law reform ventures, particularly in an age of tight resources. To that end, it cooperates with other law reform agencies in Canada, and the Uniform Law Conference of Canada in various forms of joint projects. The Institute is interested in advancing further the cause of cooperation in law reform ventures in Canada. There is a standing invitation to any law reform agency to propose to it cooperation with respect to a particular venture.

WORKING METHODOLOGY

At the time a project is taken on, an initial assessment is made of the parameters of that project, the working methodology which is to be adopted with respect to the project, the likely work output, the resource costs of the project, and the socio-political climate which may lead to adoption of the proposals evolved.

The Institute publishes four kinds of documents. First, sometimes it publishes pure research papers. These are papers where, for one reason or another, in the course of a project it is thought necessary to do some pure research (whether of a doctrinal or empirical variety) and it is thought useful to disseminate the results of that work for the benefit of other researchers or the legal profession.

A second document is what the Institute terms an Issues Paper. A document of this variety is usually issued in the early stages of a project. It will outline the nature of the problem which the Institute is considering, broadly what the present law is, and suggest the sorts of issues which the Institute thinks may need to be addressed, and possibly advance some tentative proposals. A document of this character is intended to be very much a preliminary and consultative one and to enable Institute staff and the Board to check whether the Institute has, in the eyes of knowledgeable observers, correctly perceived the problems arising and the sorts of things which need to be addressed. An Issues Paper is not distributed in every project; it entirely depends upon the parameters and circumstances of the particular project.

A third kind of document published by the Institute is a Report for Discussion. This corresponds to what, in some law reform agencies, are called Working Papers. This is a much fuller document than an Issues Paper. It usually outlines with much greater precision the existing law, the issues, the solutions or directions the Institute is proposing, and frequently carries the matter to the stage of draft legislation. The purpose of such a document is again consultative. It is to allow both professional and public input on the Institute's proposals before a Final Report is made.

A fourth category of document is the Final Report. As a matter of convention, although it is not a requirement, the Institute "reports" through the Department of the

Attorney General, to the Attorney General. A Final Report is the position taken by the Institute after all due deliberation, and almost invariably includes suggested legislation.

All four categories of documents are widely distributed. Approximately 2,500 copies are printed. Distribution is broadly as follows: all government departments, all members of the Legislature and Cabinet, all members of the Judiciary (all ranks), all legal firms in the province, all law libraries in the province, all law reform agencies in the British Commonwealth, a large number of other selected Canadian depositories, and approximately 400 law libraries in the western world. It is open to any individual member of the profession to request that that person's name be put on the Institute's mailing list. Copies are distributed free of charge.

The process does not end with publication of a Final Report. The Institute monitors the results of its work output. Regular discussions are held with (particularly) the Attorney General's Department as to the possibility of implementation of reports. The Institute has in the past appeared before legislative committees to assist at the time legislation is being enacted. From time to time it is asked by government departments, or itself offers further commentary on proposals as they advance through the legislative process. Even after a matter has been enacted, the Institute, of its own motion, or by arrangement with a government department, may continue to monitor the effectiveness of the particular change to the law with a view to seeing that it is truly effective and operating in the manner contemplated. For instance, the Institute maintained a watching brief on the Business Corporations Act after it was enacted, and in 1987 completed a number of suggestions for amendments to the parent statute, which were subsequently enacted by the legislature.

THE BOARD OF THE INSTITUTE

The membership of the Institute's Board remained unchanged in the year in question save for the addition of Mr. J.L. Foster, Q.C. in April, 1987.

MANAGEMENT OF THE INSTITUTE

Professor Hammond having indicated his intention to step down from from the Directorship as of 31 March 1988, the Institute put in place a national search process.

In the result, Professor Peter J.M. Lown of the Faculty of Law at the University of Alberta will assume the Directorship as of the 1st of April 1988.

Professor Lown has an LL.B. (Hons) from the University of Glasglow, and an LL.M. from the University of Saskatchewan. He was admitted to the Alberta Bar in 1973. He has been on the Faculty of Law at the University of Alberta since 1969. He is a member of the Alberta Bar. His research interests are in the areas of intellectual property, communications law, company law and family law. He is a former Executive Director of the Canadian Institute for the Administration of Justice and a former member of the Institute's Board of Directors.

He has the confidence of the Institute, the Faculty and the Alberta Bar, and extensive administrative experience.

RETIREMENT OF PROFESSOR R.G. HAMMOND FROM THE DIRECTORSHIP

It was with regret that the Institute's Board received Professor R.G. Hammond's notification of his intention to retire from the Directorship as of 31 March 1988.

Professor Hammond had joined the Institute staff as a senior staff counsel in 1982 after teaching experience at the University of Illinois and Dalhousie University and had then assumed the Directorship in succession to Mr. W.H. Hurlburt Q.C. He is going to the Faculty of Law, University of Auckland, New Zealand to take up a Chair of Commercial Law.

LEGAL STAFF

The Board received with regret the resignation of Professor T.W. Mapp, effective June 30th. Professor Mapp had been a valued member of the Institute's legal staff for eleven years.

Professor Mapp came to the Institute after extensive teaching experience in the United States and Canada and was associated with a number of Institute projects. He had a substantial input into the Institute's work in reform of property law, and undertook the difficult task of writing the Institute's consultative report on *Limitations*. He served as an Associate Director, and as an Acting Director during the absence of the Mr. W.H. Hurlburt, Q.C. on a sabbatical. His expertise in the

area of land titles law led to the production of a book, *Torrens' Elusive Title* whilst he was with the Institute. Professor Mapp has taken up a short term appointment at the School of Law, Washington & Lee University in the United States, prior to retiring proper.

Two new counsel were hired in the year in question. First, Mr. B.R. Burrows joined the Institute's legal staff in April, 1987. Mr. Burrows holds undergraduate and LL.B. degrees from the University of Alberta, and an LL.M. from the University of London. He practiced as a partner in McLennan Ross and Partners for some years, and appeared not infrequently before the Alberta Court of Appeal and the Supreme Court of Canada. Prior to joining the Institute legal staff he acted as Counsel assisting the Inquiry into the Hinton Train Crash. His expertise and experience will be of great assistance to the Institute in future years.

Mr. R.W. Bauman joined the Institute legal staff in August, 1987. Mr. Bauman has undergraduate degrees and an LL.B. from the University of Alberta. He practiced with Field and Field in Edmonton before becoming an Assistant Professor of Law at Dalhousie University. More recently he has been undertaking a D.Phil. at Oxford University under Professor Ronald Dworkin.

The Institute has a secondment arrangement with the Faculty of Law, University of Alberta. For the last two years Professor Christine Davies has been a full time member of the Institute's legal staff. In July she returned to the Law Faculty, and Professor P.J. Lown joined the Institute's legal staff to work on the Institute's project on Securities: Electronic Clearing Agencies.

SECRETARIAL STAFF

Mrs. Carole Worock continued to act as Administrator to the Institute. Mrs. Shirley Ewmett was secretary to the Director. Cheryl Robison was a secretary. Marlene Welton continued to assist in the front office and as a part time librarian.

Notwithstanding the continued computerization of the Institute's operations and the provision of micro-processors for all Institute counsel, the duties of secretarial staff continue to be onerous, and involve a large volume of technical typing and associated work. This work was diligently and cheerfully discharged. The Institute is grateful.

LIBRARY

A reorganization of the Institute's Library took place in the reporting year. In the result a fully qualified Librarian was hired to work on a three-day a week basis. Dr. Tanya Filanovsky holds a Master of Library Science degree from the University of Alberta as well as a Ph.D. from the Agrophysical Research Institute at Leningrad. In addition to her qualifications as a Librarian, Dr. Filanovsky is also interested and expert in the application of computer systems to legal research. She is engaged in overhauling the Institute's library and in looking at improving the efficiency of the Institute's legal research techniques. The benefits of this exercise will become increasingly apparent as the exercise proceeds further.

SUMMER STUDENTS

During the year in question the Institute engaged three summer students to assist in research on particular projects. These students were second year law students. They were: Mitchell McKinnis, Robert Chambers and Sandra Wagenseil. The Institute appreciates the quality work of its summer students and the youthful exuberance they bring to their work.

FINAL REPORTS

Prejudgment Remedies for Unsecured Claimants (Report No. 50 - February 1988)

This Report is the first in a series of final reports on the general topic of remedies of unsecured creditors and deals with prejudgment remedies for unsecured claimants. That is, it concerns legal mechanisms the purpose of which is to make it more likely than it would otherwise be for the person who has a claim which could result in a money judgment against another person, but who cannot rely on any security interest in property of the defendant, will be able to enforce a judgment if he eventually gets one. The Report describes in some detail the hodgepodge of prejudgment remedies which currently exist in the province, and concludes that they do not provide Albertans with as effective, coherent and fair a system of provisional relief as they could reasonably expect to have. The Report makes fairly detailed recommendations for a legislative solution to the inadequacies identified.

The crux of the Institute's recommendations is that all existing prejudgment relief mechanisms should be replaced with a single mechanism by which an unsecured plaintiff can obtain a prejudgment remedy, to be called an "attachment order". An attachment order could only be granted by a judge of the Court of Queen's Bench. A judge to whom an application for an attachment order is made would have a broad but not unfetted discretion in deciding whether to grant an attachment order, and as to the precise nature of any order granted.

Provided the grounds for attachment exist, an attachment order could be issued in any case where a claimant is asserting a claim against a defendant that could result in a money judgment or award. The availability of attachment orders would not be restricted to any particular kind of claim within this class, such as claims in respect of a debt or liquidated sum. Doing away with such restrictions would avoid much costly and time-wasting litigation. However attachment orders would not be issued indiscriminantly, but only where they are genuinely required to to prevent the improper disposition of defendant's property. An attachment order could not be granted unless the court were satisfied that: (1) there is a reasonable likelihood of the claimant getting judgment against the defendant; (2) there are reasonable grounds for believing that if not prevented from doing so, the defendant would be likely to make some disposition of his property that would seriously hinder the plaintiff in collecting on a judgment; and (3) considering all the circumstances, it would be just and equitable to grant an attachment order.

The court would also be directed not to grant an attachment order for the purpose of preventing a reasonable, *bona fide* disposition of the defendant's property in the ordinary course of business or living, even if the disposition might hinder the claimant's efforts to collect on a future judgment. Once the court decides to grant an attachment order, the legislation would allow it a good deal of flexibility in deciding how to prevent the improper disposition of the defendant's property. The effect of an attachment order on third persons would be fairly limited. The attachment order would not affect antecedent interests in the attached property, nor would judgment creditors of the defendant be delayed in enforcing their judgments against the defendant's property by reason of the fact that it was subject to an attachment order. The recommendations also emphasize flexibility on the matter of procedure and safeguards.

This Report does not include a draft statute based on our recommendations. A draft statute will be included in the last report of the series on creditor-debtor law reform. However most of the formal recommendations are framed fairly closely to statutory language. Thus the draft statute - or at least the part of it dealing with prejudgment remedies - will bear a close resemblance to the list of recommendations set out in Part III of this Report.

REPORTS FOR DISCUSSION

Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (Report for Discussion No. 5 - August 1987)

The Institute was responsible for the evolution of the Alberta Business Corporations Act (see Report No. 36). It also proposed in Report No. 49 a new Alberta Incorporated Associations Act. And, in 1987 (see Annual Report p. 19) it proposed by an informal memorandum to the Department of Consumer and Corporate Affairs, certain amendments to the Business Corporations Act.

One particular section of the Alberta Business Corporations Act -- Section 42 -- was thought to raise discrete and difficult problems and to deserve a law reform report of its own. In the result, this Report is a consultative one, and is intended to lead eventually to a statutory reformulation of section 42.

This section was enacted in 1981. In broad terms, it regulates the conditions under which a corporation may give financial assistance, directly or otherwise, to a shareholder or director of that corporation, or to any person in connection with the purchase of shares in that corporation where there are reasonable grounds for believing that the corporation is or would (after the transaction complained of) be insolvent. Certain exemptions are provided for. For instance a loan may be given to enable employees of a corporation to assist them to purchase or erect living accommodation for their own occupation.

The perceived evils sought to be addressed by the section are the prevention of the personal aggrandizement of directors of companies by "siphoning off" of corporate funds through loans to

themselves, the inhibition of certain practices on corporate rearrangements or the sale of shares, and the protection of trade creditors.

The section has legislative predecessors in prior Alberta companies legislation, and many corporations statutes in the common law world contain provisions aimed at these same evils, although the precise terminology, terms and strength of sanction vary. The Alberta section closely follows the model first established in Canada by the CBCA.

The section has given rise to problems in practice and has attracted adverse comment from the practicing bar and the financial community. First, the ABCA makes a distinction between distributing corporations and non-distributing corporations. These two categories are functionally different. The former corresponds more closely to the older concept of a public company, the latter is more in the nature of an incorporated partnership. Section 42 does not observe this distinction, and the rules laid down by the section apply to all corporations, without differentiation. In the result, some restrictions in fact apply which make no sense in particular cases. Second, the section attempts to protect creditors by ensuring that a corporation is "solvent" before the particular transaction is entered into. The concept of solvency - difficult at the best of times - is made even more difficult in the case of section 42 by a double-barreled test. First, the corporation must be able "to pay its liabilities as they become due" and second the "realizable value" of the corporation's assets must exceed the aggregate of the corporation's liabilities and the stated capital of all classes of shares. Interpretation and application of these provisions (particularly the underlying asset test) has proven difficult, and has led to doubts as to whether a corporation is within whatever the appropriate accounting formula it is. Commercial transactions have been unduly inhibited. Third, the precise effect of the section upon a transaction which infringes its provisions has been the subject of some debate. It appears to be the position that the security transaction is void and cannot be relied on in any way. The result is that a lender cannot recover a loan or at all. That is, the secured lender is placed in a worse position than even unsecured creditors. This appears to be contrary to the original intent of the framers of the present provision.

After a review of the historical and policy position, the Report nevertheless concludes that there are sound reasons in some situations for a protective policy. It suggests that the present section 42 of the ABCA should be repealed. Some degree of regulation is required but several

discrete situations require differential treatment. The distinction already enacted in the ABCA between distributing and non-distributing corporations should be utilized and applied to four discrete situations.

First, financial assistance to directors and other persons with respect to distributing corporations should be absolutely prohibited, but subject to certain specific exceptions. These exceptions are relatively narrow and include certain activities which may be said to be fairly incidental to the proper activities of the corporation.

Second, financial assistance to directors and other persons with respect to non-distributing corporations should not be absolutely prohibited. Corporations of this kind are like incorporated partnerships. However assistance should not be permitted save where the corporation is solvent in the sense of being able to pay its liabilities as they fall due and, for a specified period thereafter. The reason for this requirement is to protect the interests of trade creditors.

Third, as to financial assistance with respect to the purchase of shares in a distributing corporation, the Institute has tentatively recommended a distinct change in the law. The abuses in this area have historically arisen with respect to corporate takeovers and reconstructions, and routinely in corporations having some relation to each other. The traditional proscription came into being prior to the inception of modern securities regulation. The Institute is tentatively of the view that *any* proscriptions in this area should be removed from the corporations statute and dealt with as a securities matter under the Alberta Securities Act.

Fourth, as to financial assistance with respect to the purchase of shares in a non-distributing corporation, the traditional formula endeavours to afford protection to trade creditors. There is a substantial issue as to whether the law should continue to reflect that policy. The Institute has tentatively recommended that it should. Certain alternative solutions are suggested as to how this might best be effected.

With respect to the effect of a transgression of the statutory prohibition the Institute's tentative view is that it is not appropriate that the transaction should be rendered absolutely void. Recommendations are made which are designed to overcome the Draconian effect of the present law.

Submissions are still being received on the report and consultation undertaken. A final report is expected in 1988.

Sterilization Decisions: Minors and Mentally Incompetent Adults (Report for Discussion No. 6) (March 1988)

The Institute has had a project on foot with respect to this subject for several years. A substantial amount of work had been done, and a Report prepared to go to the printers, when the Supreme Court of Canada released its decision in *Re Eve*. That decision was so important as to necessitate a complete review and rewriting of the Report.

As matters now stand the present law relating to sterilization of mentally disabled persons is complex and controversial. It is complex because it is found in several different common law and statutory provisions, and the exact ambit of that law is uncertain. It is controversial because the Supreme Court of Canada ruled that a non-therapeutic sterilization can never safely be determined to be in the best interests of a mentally disabled person.

In these circumstances the Institute is of the view that it is timely and of public importance that this subject area of the law be legislatively reviewed. This consultative document sets out the evolution of the present law, its apparent parameters, the social and medical background to sterilization decisions, and tentatively recommends a new statutory regime which would better reflect the present day and foreseeable needs of Canadian citizens. Although the model as so evolved is intended for potential enactment by the Alberta legislature, it could also serve, we think, as a model for other Canadian jurisdictions.

The Report is based rest on four guiding principles: (a) a sterilization should be performed only where it is in the best interests of the person to be sterilized, and not where its purpose is to benefit others; (b) a sterilization should be a last resort, other alternatives having been shown to be inadequate for the intended purposes; (c) the "dignity, welfare and total development" of the mentally disabled person considered should be respected at all times; and (d) the procedure for the decision should ensure the protection of these other principles.

A judge of the Court of Queen's Bench would be able to make an order authorizing a proposed sterilization where that person is satisfied that it is in the best interests of the person that it be performed.

The legislation would divide sterilizations into three categories:

(a) Sterilization for necessary medical treatment. This involves sterilization for the protection of the physical health of the person to be sterilized.

(b) Elective sterilizations. This includes sterilizations for optional medical treatment and birth control.

(c) Hysterectomy for menstrual management. This involves the removal of the uterus for the purpose of eliminating menses.

Sterilizations for necessary medical treatment would be excepted from the operation of the new legislation. The existing law of consent to medical treatment would apply. In applying the existing law, a mature minor would be able to give his or her own consent to a sterilization for necessary medical treatment. The Institute's tentative recommendations would require the legislation to be followed where the legislation is for any other purpose. Elective sterilizations and hysterectomies for menstrual management would be governed by the new legislation.

Before making an order, the judge would be required to consider a number of factors specified in the legislation. These include such things as the mental condition of the person to be sterilized, her physical capacity to reproduce, the likelihood that she will engage in sexual activity, the risks to her physical health with or without sterilization, the risks to her mental health, the alternatives to sterilization, the likelihood that she will marry, the risk of disability in a child that may be born, her ability to care for a child, other care available for a child, the effect of undergoing or foregoing sterilization on the care available for her, and on her opportunities for satisfying human interaction, her wishes and concerns, the wishes of her family and other caregivers, and any other relevant matter.

Certain procedures must be followed for the protection of the person named in the application. A judge would be required to appoint a lawyer to represent the interests of the person

to be sterilized, an applicant would be required to file the reports of a physician and psychologist in support of the application, and the lawyer representing the person to be sterilized would be able to apply for directions for the engagement of experts to conduct evaluations. A judge who is in doubt about whether an order should be made would be able to conduct an investigation into any matter connected with the application.

Draft legislation is included in the Report, as is an amendment to the Dependent Adults Act that would limit to sterilizations for necessary medical treatment the authority given to a guardian by appointment under that Act to make decisions concerning the provision of health care to a dependent adult.

Consultation on the Report is continuing and a final report is expected in 1988.

ISSUES PAPERS

Towards a New Arbitration Act for Alberta (Issues Paper No. 1 - July 1987)

In 1987, the Institute's Board resolved to undertake a review of the existing Alberta Arbitration Act. It did so because representations made to the Institute of Law Research and Reform over the years have suggested that changes in the Arbitration Act are needed, and the Alberta Arbitration and Mediation Society had taken initiatives towards the preparation of a new Arbitration statute. A preliminary view of the kinds of questions arising suggested that changes are needed and that the project would likely result in recommendations for a revised and modernized statute.

The Institute decided to issue an Issues Paper, to serve two purposes. One is to obtain information about the working of the present law. The second to obtain informed advice about the policies upon which an arbitration should be based in Alberta today and for the foreseeable future.

The particular Issues Paper indicates what an arbitration is, what the present law with respect to arbitrations is, the way in which arbitrators and arbitrations in fact work, how awards are issued, and how arbitrations are supervised by the courts. It sets out various initiatives which have taken place at both the domestic level in Canada, and internationally, for improved arbitral regimes.

Response to the Issues Paper has been good. The Alberta Arbitration and Mediation Society has provided a great deal of cooperation and assistance on this project and the Institute is most grateful to the Society for its encouragement, information and counsel.

It is thought unlikely that a further consultative document will be required on this project, and work is well in hand towards presenting the results of all the deliberations and consultations to the Institute's Board early in 1988, to enable a Final Report to be made in 1988.

Towards Reform of the Law Relating to Cohabitation Outside Marriage (Issues Paper No. 2 - October 1987)

The institution of marriage has been widely regarded as fundamental in western societies. When a man and a woman marry according to law, the state recognizes that union, and certain rights and obligations then arise between the parties to it. A relatively elaborate array of rules, both statutory and judge-made, come into play. The legal regime surrounding marriage and the dissolution of marriage is well known both professionally, and to the man in the street.

The legal position surrounding the status and incidents of persons who enter cohabitational arrangements outside marriage is much less clear. Social arrangements of a cohabitational character have probably existed throughout human history, but it was widely thought that the number of cohabitational arrangements were increasing.

In recognition of what was thought to be a wide-spread social phenomenon, and one with significant social and legal implications, the Board thought it appropriate to review this subject area with a view, ultimately, to bringing forward recommendations for such legislative change in Alberta law as might be thought to be appropriate.

This was one area where an empirical research paper was thought to be necessary. In November of 1984 the Institute issued Research Paper No. 15, *Survey of Adult Living Arrangements: A Technical Report*. That empirical report did suggest a relatively wide-spread phenomenon.

The Institute then arranged for Professor Christine Davies, of the Faculty of Law, University of Alberta who is a highly regarded family law commentator in Canada, to join the Institute's legal staff for a period of two years under the Faculty Secondment Agreement. The purpose of the

secondment was to enable Professor Davies to prepare a paper outlining the present law, the problems arising within it, and make tentative suggestions for reform. This Professor Davies did.

That paper was considered by the Institute's Board. The paper was very well-researched and written, but it was clear that on some of the issues - particularly the question of maintenance or its equivalent for cohabitees - that there were significant differences of opinion. It was also clear that those differences mirrored those likely to be found in the profession and public at large.

In the result, the Institute's Board thought it advisable to publish an Issues Paper to take advantage of Professor Davies' work, but also allow greater input from the profession and the public before the Institute's Board makes final recommendations in this subject area.

This Issues Paper therefore sets out what appear to be the sorts of questions which appear to need to be addressed on such matters as maintenance, property, possession of property, succession and technical matters such as workers' compensation, insurance, pensions and other issues. It also incorporates Professor Davies' valuable paper to make it more widely available for discussion purposes.

Consultation is continuing on this Report. It is thought that those consultations will be concluded by mid-1988. The Issues Paper is sufficiently detailed that it is unlikely that a Report for Discussion will be required in this subject area, and a Final Report is therefore expected later in 1988.

INSTITUTE SECONDMENT OF COUNSEL TO OTHER PROJECTS

From time to time Institute Counsel work on task forces or other government initiated projects which do not result directly in Institute reports. This involves considerable secondment of Institute resources, and sometimes results in substantial pieces of legislation.

During the year in question there have been two such secondments.

Trade Secrets

Professor R.G. Hammond had the carriage of the Trade Secrets project which resulted in publication of Report No. 46 *Trade Secrets* in July of 1986. Subsequent to the publication of that Report, as noted in the 1987/88 Annual Report at pp. 10-12, the Report was referred to the Uniform Law Conference of Canada. That Conference, at its meeting in Victoria in August of 1987, adopted the Institute's draft Act, with very slight modifications, as a uniform statute for Canada.

Mental Health Law

The Uniform Law Conference of Canada has also been engaged in a study of mental health legislation with a view to proposing a Uniform Mental Health Act. Margaret A. Shone of Institute counsel has been a delegate to the Conference's working group. She assisted in the evolution of draft legislation which was put before the Uniform Law Conference of Canada for its meeting at Victoria in August of 1987. Work on that project is continuing.

WORK IN PROGRESS

Creditors' Remedies

As noted earlier, one Final Report in this subject area was issued in the reporting year (Prejudgment Remedies). The draft Final Reports on Execution Against Land, The Execution Creditors Act, and a report on the Proposed New Enforcement Order have been prepared. The Institute's Board has spent extensive time considering these drafts. A revised work plan designed to complete work on this project area by the end of 1988 has been prepared, and is being worked to, with a substantial secondment of Institute resources. It is expected that the Final Reports on this subject area, and draft legislation will be completed by the end of 1988.

Land Titles

In the 1986/87 Report it was indicated that it was hoped that work could begin again on this project under the guidance of Professor Mapp. Life overtook planning. Professor Mapp retired. The Institute's Board is anxious to see this project completed and a work plan has now been prepared to enable the advancement of this project later in 1988. W.H. Hurlburt, Q.C. will have the overall supervision of the project, and Professor Mapp will act as a Consultant. It is unlikely that a report of any kind will be available before 1989, in view of the other pressures on Institute resources.

Securities - Electronic Clearing Agencies

In recent years there have evolved commercial entities which act as clearing agencies for the electronic transfer and pledge of securities. There is a question as to how far such entities can be established and operated under existing Alberta corporations law. One such entity is Canadian Depository for Securities Limited, which is incorporated under the federal corporations statute. Its principle objective is to contribute "to the improved efficiency of the financial sector of the Canadian economy through provision of automated facilities for clearing of securities transactions and security of certificates".

The Department of Consumer and Corporate Affairs has been concerned to encourage the establishment of such facilities in Alberta. In July of 1987 Professor Peter Lown came to the Institute from the Law Faculty with a view to his preparing, on a 12 month secondment, a report on this subject area. Work duly commenced and has been substantially advanced and a consultative report of some variety - either an Issues Paper or a Report for Discussion - should be distributed later in 1988.

Mortgages

Work has continued on this project although the pressures on the Director, Professor R.G. Hammond, who has the carriage of this matter, have been such that a report has not yet been published. It is however expected that a report of a consultative variety will be available later in 1988.

PUBLICATIONS AND PRESENTATIONS

Professor R.G. Hammond taught Mortgages in the Faculty of Law. He gave a paper to a LESA Seminar on Computer Law on April 7-8, 1987 on Trade Secrets. He gave a paper on the same subject at the CBA Mid-Winter meeting in March 1988 in Calgary. He was the after dinner speaker at the Annual General Meeting of the Alberta Arbitration and Mediation Society in November of 1987, and spoke on Alternative Dispute Resolution. He addressed the Foreclosure Law Subsection of the CBA on March 8, 1988 on Foreclosure Law, and the Mortgage Loans Association luncheon on mortgage law reform on March 17, 1988.

In October 1987 Professor Hammond attended the annual workshop on Consumer and Corporate Law at the University of Toronto. In November and December 1987, he visited at the Institute of Advanced Legal Studies, London; Oxford and Cambridge Universities; and the University of Southampton. He gave several seminars and lectures on developments relating to law and technology in Canada, and trade secret law. Professor Hammond attended the Uniform Law Conference in Victoria, B.C. and the meeting of Canadian Law Reform Agencies in August of 1987. He also visited the Law Commission in the United Kingdom in December of 1987.

Professor Hammond published the following articles: "A Bill of Rights - The Canadian Experience" (1987) N.Z.L.J. 132; "The Development of Trade Secrets Law in Canada" (1988) 3 The Computer Law and Security Report 14; and an article on the Spycatcher Case entitled "The Wright Case - Wrong Answer?" (forthcoming) 1988 Intellectual Property Journal.

Ms. M.A. Shone published a case comment on *Re Eve*: "Mental Health Sterilization of Mentally Retarded Persons - *Parens Patriae* Power: *Re Eve*", (1987) 66 Can. Bar Rev. 635.

Ms. Shone gave the following speeches: "Rights and Responsibilities: A Review of Deficiencies in Federal and Provincial Laws Affecting the Mentally Disordered" (3rd National Conference on Provincial Social Welfare Policy organized by the University of Calgary, Banff, April 1987); "Legal Rights of the Elderly - Can the home care worker help protect the rights of their clients?" (Fourth National Conference of the Canadian Council on Homemaker Services, Calgary, April 1987); "Certifiability and Competence" (Address to Alberta MLAs hosted by Canadian Mental

Health Association (North Central Region), October 1987); "Recent Developments in Mental Health Law" (CBA Health Law Section, October 1987).

Ms. Shone gave guest lectures in the University of Alberta Faculty of Medicine to undergraduate students in the course on Medical Jurisprudence and Bioethics, and to student residents in psychiatry. She also conducted two seminars in the Division of Critical Care Seminar Series.

Mr. B.R. Burrows taught a course on Creditors' Rights in the Faculty of Law, University of Alberta in the spring semester, 1988. He attended a symposium on Dispute Resolution in Fredericton, New Brunswick in October of 1987 and participated in a LESA Seminar on Trial Preparation in Calgary and Edmonton in November of 1987.

Mr. R.H. Bowes taught Trusts in the Faculty of Law in the Spring semester of 1988.

Mr. R.W. Bauman gave a paper at a Faculty Seminar, University of Alberta Law School entitled "Liberalism and Communitarianism in Contemporary Legal Theory", on February 5, 1988. He has two forthcoming publications: "The Communitarian Vision of Critical Legal Studies" (1988) 33 McGill L.J.; and a Review Article on A.C. Hutchinson and P. Monahan (eds.), *The Rule of Law: Ideal or Ideology* (1988) 27 Alta. L. Rev.

LEGISLATIVE IMPLEMENTATION OF INSTITUTE REPORTS

In the 1986/87 Annual Report reference was made to concern which the Institute's Board felt about the non-enactment of some Institute reports.

It is pleasing to report that some progress is being made. The Court of Queen's Bench Amendment Act, giving effect to the Institute's Report No. 40, *Judicial Review of Administrative Action*, received assent on June 17, 1987 (S.A. 1987, c. 17). On that same date the Business Corporations Amendment Act 1987 also received royal assent (S.A. 1987, c. 15). This enacted amendments suggested by the Institute to the Business Corporations Act.

On June 15, 1987 the Volunteer Incorporations Act was given a first reading. This bill would give effect to the Institute's Report No. 49 (*Proposals for a New Alberta Incorporated*

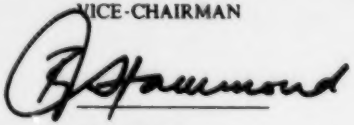
Associations Act). It is apparent that this bill has attracted widespread interest and it is possible that the administration of the day may wish to engage in further consultation before moving the bill forward.

As previously noted, the Uniform Law Conference of Canada adopted the Institute's draft Trade Secrets statute as a model for a uniform statute for Canada.

The Board of the Institute remains concerned that its work products be moved forward into legislation. As noted in the 1987 Report, the Institute is an advisory body only, and at the end of the day it is for the administration of the day to decide on enactment. Nevertheless, the Institute's Reports are the products of a great deal of research, public consultation, and the application of public resources, and the Final Reports generally reflect a widespread consensus. In those circumstances the Board continues to urge upon the administration of the day the desirability of moving reports forward into legislation.

J.W. BEAMES	J.C. LEVY
M.B. BIELBY	D.B. MASON
C.W. DALTON	J.P. MEEKISON
J.L. FOSTER	B.L. RAWLINS
R.G. HAMMOND	A.C.L. SIMS
W.H. HURLBURT	C.G. WATKINS
H.J.L. IRWIN	D.P. JONES

VICE-CHAIRMAN



DIRECTOR

March 31, 1988

APPENDIX A

LIST OF BOARD MEMBERS

Present Members

J.W. Beames, Q.C.
Member at large - August 1979 to March 1986
Law Society nominee - March 1986 to present

M.B. Bielby
Member at large - June 1986 to present

C. W. Dalton
Attorney General's nominee - March 1984 to present

J.L. Foster, Q.C.
Member at large - April 1987 to present

Professor R.G. Hammond
Member at large - March 1985 to March 1986
Director - April 1986 to March 1988

W.H. Hurlburt, Q.C.
Law Society nominee - November 1967 to January 1970
Member at large - February 1970 to January 1971
Law Society nominee and Chairman - February 1971 to December 1973
Member at large and Associate Director - January 1974 to August 1975
Director - September 1975 to March 31, 1986
Attorney General's nominee - October 1986 to present

H.J.L. Irwin
Member at large - June 1986 to present

Professor D.P. Jones
University of Alberta Faculty of Law nominee - October 1986 to present

Professor J.C.Levy
University of Calgary Faculty of Law nominee - December 1981 to present.

Hon. Mr. Justice D.B. Mason
Member at large - February 1979 to September 1985, and March 1986 to present

Professor J.P. Meekison
University of Alberta nominee ((Vice-President (Academic)) August 1985 to present

B.L. Rawlins
Member at large - June 1986 to present

A.C.L. Sims
Member at large - June 1986 to present

C.G. Watkins
Member at large - March 1986 to present

Former Members

G.W. Acorn, Q.C.
Attorney General's nominee - November 1967 to January 1969

Professor D. Trevor Anderson
University of Alberta Faculty of Law nominee - November 1967 to June 1971

Margaret Donnelly
Attorney General's nominee - June 1976 to February 1979

W.F. Bowker, Q.C., Director Emeritus
Director - January 1968 to August 1975
Member at large - September 1975 to December 1984

Professor C.R.B. Dunlop
University of Alberta Faculty of Law nominee -September 1981 to December 1982

G.C. Field, Q.C.
Member at large - April 1981 to May 1986

H.G. Field, Q.C.
Law Society nominee and Chairman - November 1967 to February 1971

R.P. Fraser, Q.C.
Member at large - June 1970 to January 1976
Law Society nominee - January 1976 to February 1979

Dean G.H.L.Fridman
Member at large (University of Alberta Faculty of Law) - February 1971 to June 1975

S.A. Friedman, Q.C.
Attorney General's nominee - November 1967 to November 1970

E.J.F. Gamache, Q.C.
Attorney General's nominee - February 1979 to February 1984

J.E. Hart, Q.C.
Attorney General's nominee - November 1967 to January 1969

Wm. Henkel, Q.C.
Attorney General's nominee - December 1970 to June 1976

Professor R.G. Hopp
University of Alberta Faculty of Law nominee - August 1979 to September 1981

Dr. M. Horowitz
University of Alberta nominee (Vice-President (Academic)) - July 1975 to July 1979

Professor Constance D. Hunt
Member at large (University of Calgary Faculty of Law) July 1980 to June 1981

Dr. Henry Kreisel
University of Alberta nominee (Vice-President (Academic)) - September 1970 to June 1975

Professor F.A. Laux
University of Alberta Faculty of Law nominee - September 1972 to May 1976

Professor L.C. Leitch
University of Alberta nominee (Vice-President (Finance and Administration)) - February 1980 to August 1985

Professor P. Lown
University of Alberta Faculty of Law nominee - January 1983 to February 1983

Dr. A.G. McCalla
University of Alberta nominee (Vice-President (Academic)) - November 1969 to May 19

Dean J.P.S. McLaren
Member at large (University of Calgary Faculty of Law) - January 1976 to June 1980

Professor T.W. Mapp
Member at large - April 1981 to May 1986

Robert R. Neve (deceased)
Member at large - April 1970 to May 1970

Professor R.S. Nozick
University of Alberta Faculty of Law nominee - March 1983 to May 1986

J.S. Palmer
Law Society nominee - November 1967 to February 1970

R.M. Paton
Attorney General's nominee - May 1982 to June 1985

Professor Julien D. Payne
University of Alberta Faculty of Law nominee - July 1971 to June 1972

Professor Ellen Picard
Member at large - June 1975 to December 1975
University of Alberta Faculty of Law nominee - May 1976 to July 1979

Margaret A. Shone
Member at large - May 1985 to May 1986

Justice W.A. Stevenson
University of Alberta Faculty of Law nominee - August 1969 to January 1970
Member at large - February 1970 to December 1973
Law Society nominee and Chairman - January 1974 to January 1976
Member at large and Chairman - January 1976 to July 1979

Dr. A.R. Thompson
University of Alberta Faculty of Law nominee - November 1967 to June 1969

W.E. Wilson, Q.C.
Law Society nominee - June 1976 to March 1986
Chairman - September 1979 to March 1986

Dr. Max Wyman
University of Alberta nominee (Vice-President (Academic)) - November 1967 to March

APPENDIX B

RECORD OF LEGISLATION BASED ON INSTITUTE'S RECOMMENDATIONS

Formal Report - Number and Title			Legislation
No.	1	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, R.S.A. 1970, c. 75 (now R.S.A. 1980, c. C-33, am. by S.A. 1982, c. 14)
No.	2	Powers of Personal Repre sentatives to Grant Options (June 1969)	Wills Act, R.S.A. 1970, c. 393, s. 30 (now R.S.A. 1980, c. W-11, s.30) Devolution of Real Property Act, R.S.A. 1970, c. 109, s. 13 (now R.S.A. 1980, c. D-34, s. 12)
No.	3	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 1980, c. O-3)
No.	4	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 1980, c. A-4)
No.	5	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 1980, c. G-12) accepted. Recommendations for incidental amendments not acted upon.
No.	6	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 1980, c. P-4)
No.	7	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71
No.	8	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now R.S.A. 1980, c. W-1)
No.	9	Rule in *Saunders* v. *Vautier* (February 1972)	S.A. 1973, c. 13, s. 12 amending the Trustee Act, R.S.A. 1970, c. 373, s. 37 (now R.S.A. 1980 c. T-10, s. 42)

1969

No. 10	Powers of Maintenance and Advancement (June 1972)	S.A. 1974, c. 65, s. 9 amending the Trustee Act, R.S.A. 1970, c. 373, ss. 31-33 (now R.S.A. 1980, c. T-10, ss. 32, 34, 35, 36(3), 37)
No. 11	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 amended 1975, c. 5 (2 sess.) (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 10-13; Land Titles Act, R.S.A. 1980, c. L-5, ss. 71, 72, 119)
No. 12	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 1980, c. E-16)
No. 13	Judicature Act, Section 24 (August 1974)	S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193
No. 14	Minors' Contracts (January 1975)	
No. 15	Validity of Rules of Court (December 1974)	S.A. 1976, c. 58, s. 6(4) amending the Judicature Act, R.S.A. 1970, c. 193, s. 39 (now R.S.A. 1980, c. J-1, s. 47)
No. 16	Rule in *Hollington* v. *Hewthorn* (February 1975)	S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act, R.S.A. 1970, c. 127, s. 27 (now R.S.A. 1980, c. A-21, s. 27)
No. 17	Small Projects (June 1975)	S.A. 1976, c. 55, s. 2 amending the Workers' Compensation Act, S.A. 1973, c. 87, s. 15 (now R.S.A. 1980, c. W-15, s. 15); S.A. 1976, c. 58, s. 3 amending the Bulk Sales Act, R.S.A. 1970, c. 37 (now R.S.A. 1980, c. B-13, ss. 1(f), (j), 4(2), 6(b), 7, 14)

No. 18	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 1980, c. M-9), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home
No. 19	Consent of Minors to Health Care (December 1975)	
No. 20	Status of Children (June 1976)	
No. 21	Purchase by a Company of Shares Which It Has Issued 1 January 1977)	S.A. 1977, c. 13, s. 2 amending the Companies Act, R.S.A. 1970, c. 60, s. 41 (reenacted as R.S.A. 1980, c. C-20, ss. 42-49, 51-54, then superseded by S.A. 1981, c. B-15, ss. 32 and 33: see Report No. 36)
No. 22	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now R.S.A. 1980, c. L-6), based in large part on our recommendations
No. 23	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 1980, c. L-8, ss. 14-19, 20-34)
No. 24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 1980, c. S-30; Fatal Accidents Act R.S.A. 1980, c. F-5, ss. 5(2)(a), (b), 8; and Limitation of Actions Act R.S.A. 1980, c. L-5, s. 53)
No. 25	Family Law Administration: the Unified Family Court (April 1978)	
No. 26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

No. 27	Matrimonial Support (March 1978)	S.A. 1977, c. 64 amending Part 4 of the Domestic Relations Act, R.S.A. 1970, c. 113 (now covered by the Maintenance Enforcement Act, S.A. 1985, c. M-0.5, establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); S.A. 1977, c. 92 amending the Social Development Act, R.S.A. 1970, c. 345 (now R.S.A. 1980, c. S-16, ss. 14, 15); S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act, R.S.A. 1970, c. 86 (now R.S.A. 1980, c. D-5, ss. 3(2), 3(3), 4(e)-(f), (6) (Our proposals for change in the substantive law have not yet been implemented.)
No. 28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5
No. 29	Family Relief (June 1978)	
No. 30	The Builders' Lien Act: Certain Specific Problems (March 1979)	S.A. 1985, c. 14 amending the Builders' Lien Act, R.S.A. 1980, c. B-12
No. 31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	
No. 32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted S.A. 1977, c. 76, s. 6 to come into force 1 September 1979 (now Insurance Act, R.S.A. 1980, c. I-5, s. 310) (This is not the principal recommendation of the Report.)

No. 33	Inter-Spousal Tort Immunity (April 1979)	
No. 34	Service of Documents During Postal Interruptions (June 1979)	S.A. 1980, c. 88 (now Judicature Act, R.S.A. 1980, c. J-1, ss. 33-37)
No. 35	Defamation: Fair Comment and Letters to the Editor (October 1979)	S.A. 1980, c. 11 amending the Defamation Act, R.S.A. 1970, c. 87 (now R.S.A. 1980, c. D-6, s. 9)
No. 36	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15.
No. 37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
No. 37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
No. 38	The Uniform Sale of Goods Act (October 1982)	
No. 39	Defences to Provincial Charges (March 1984)	
No. 40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17
No. 41	Compensation for Security Interests in Expropriated Land (May 1984)	
No. 42	Debt Collection Practices (June 1984)	
No. 43	Protection of Children's Interests in Custody Disputes (October 1984)	
No. 44	Statute of Frauds (June 1985) - OUT OF PRINT/STOCK	

No. 45	Status of Children: Revised Report, 1985 (November 1985)	
No. 46	Trade Secrets (July 1986)	Draft statute adopted by Uniform L Conference of Canada, Victoria, B.C August 1987
No. 47	Survivorship (August 1986)	
No. 48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
No. 49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987
No. 50	Prejudgment Remedies for Unsecured Claimants (February 1988)	

APPENDIX C

OTHER PUBLICATIONS

Annual Reports

Five Year Report 1968-1973

Annual Reports 1973-1974 to 1986-1987 inclusive.

Reports for Discussion

No. 1	Protection of Trade Secrets (February 1984)
No. 2	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)
No. 3	Remedies of Unsecured Creditors (May 1986)
No. 4	Limitations (September 1986)
No. 5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)
No. 6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)

Issues Papers

No. 1	Towards a New Arbitration Act for Alberta (July 1987)
No. 2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)

Research Papers

No. 1	Rent Control; Security of Tenures (November 1975)
No. 2	Entry of Landlord; Locks and Security Devices (November 1975)
No. 3	Obligation to Repair; Security Deposits (November 1975)
No. 4	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)
No. 6	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)
No. 7	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)
No. 8	Mobile Homes (November 1975)
No. 9	Consent of Minors to Medical Treatment (May 1975)
No. 10	Illegitimacy (June 1974)
No. 11	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)
No. 12	Statute of Frauds (May 1979)
No. 13	Matrimonial Support Failures: Reasons, Profiles, and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioral and Social Sciences: May 1981)

No. 14 Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)

No. 15 Survey of Adult Living Arrangements: A Technical Report (November 1984)

No. 16 The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)

Books

Sir Victor Windeyer, Some Aspects of Australian Constitutional Law (1972)

Thomas W. Mapp, Torrens' Elusive Title: Basic Legal Principles of an Efficient Torrens' System (1978) (Alta. L.R. Book Series, v. 1)

The Alberta Limitations Manual, Butterworth & Co. (Western Canada) Ltd., 1979. (Although not prepared by the Institute, the Manual was based upon a list of statutory limitation periods in Alberta originally prepared by members of the Institute's legal staff.)

Olive M. Stone, The Child's Voice in the Court of Law, Butterworth & Co. (Canada) Ltd., 1982. (Dr. Stone's book is based on work done for the Institute while she was employed full-time as consultant on our Family Law Project).

W.H. Hurlburt, Law Reform Commissions in the United Kingdom, Australia and Canada. Juriliber Limited, 1986.